United Nations CRC/C/OPSC/MWI/CO/1

Convention on the Rights of the Child

Distr.: General
15 March 2017

Original: English

Committee on the Rights of the Child

Concluding observations on the report submitted by Malawi under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*

1. The Committee considered the report of Malawi (CRC/C/OPSC/MWI/1) at its 2185th and 2186th meetings (see CRC/C/SR.2185 and 2186), held on 30 and 31 January 2017, and adopted the present concluding observations at its 2193rd meeting (see CRC/C/SR.2193), held on 3 February 2017.

I. Introduction

2. The Committee welcomes the submission of the State party's report and notes the submission of its written replies to the list of issues (CRC/C/OPSC/MWI/Q/1/Add.1), received on the day of the dialogue. The Committee appreciates the constructive dialogue held with the high-level and multisectoral State party delegation.

3. The Committee reminds the State party that the present concluding observations should be read in conjunction with the concluding observations on the combined third to fifth periodic reports submitted by the State party under the Convention (CRC/C/MWI/CO/3-5), and on the report of the State party submitted under the Optional Protocol on the involvement of children in armed conflict (CRC/C/OPAC/MWI/CO/1), both adopted on 3 February 2017.

II. General observations

Positive aspects

4. The Committee welcomes the various measures taken by the State party in areas relevant to the implementation of the Optional Protocol, including the adoption of:

(a) The Trafficking in Persons Act of 2015, criminalizing child trafficking and making provisions for the care and protection of victims;

* Adopted by the Committee at its seventy-fourth session (16 January-3 February 2017).

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(b) The National Registration Act, enforced as of 2015, making birth registration compulsory and universal;

(c) The Penal Code (Amendment) Act of 2011, adding a chapter on offences against morality relating to children.

III. Data collection

5. The Committee notes the efforts of the State party to collect data through police records and an integrated information management system. However, it is concerned about the absence of a comprehensive system for data collection and of disaggregated statistics covering all offences under the Optional Protocol, which limit the State party's capacity to monitor and assess offences under the Optional Protocol.

6. **The Committee recommends that the State party intensify its efforts to develop and implement a comprehensive, coordinated and effective system of data collection, analysis, monitoring and impact assessment on all areas covered by the Optional Protocol, including on child prostitution, child pornography and child sex tourism, both internally and across borders, and on investigation, prosecution and protection cases. The data should be disaggregated, inter alia, by sex, age, nationality and ethnic origin, region and socioeconomic status, with particular attention to children who are at risk of becoming victims of offences under the Optional Protocol.**

IV. General measures of implementation

Legislation

7. The Committee notes that the State party has adopted several pieces of legislation in line with the Optional Protocol. However, it is concerned that the legislation of the State party neither defines nor criminalizes all forms of sale of children contained in articles 2 and 3 of the Optional Protocol, an offence that is similar but not identical to trafficking in persons.

8. **The Committee recommends that the State party expressly define and criminalize all forms of sale of children and child pornography.**

Comprehensive policy and strategy

9. While noting that the State party has adopted the National Plan of Action for Vulnerable Children 2015-2019, the Committee is concerned about the insufficient information on a national plan of action on children that includes and addresses the elimination of the sale of children, child prostitution and child pornography.

10. **The Committee recommends that the State party integrate the fight against the sale of children, child prostitution and child pornography in the National Plan of Action for Vulnerable Children 2015-2019 and that it provide appropriate human technical and financial resources for its implementation. The State party should take into account the outcomes of the World Congresses against Commercial Sexual Exploitation of Children.**

Coordination and evaluation

11. The Committee notes that the Ministry of Gender, Children and Social Welfare is responsible for policy development and oversight of all matters concerning children. However, the Committee is concerned that the Ministry does not have the capacity and

resources to effectively execute its responsibility to coordinate and implement the various laws for the protection of children under the Optional Protocol.

12. **With reference to paragraphs 7 and 8 of its concluding observations under the Convention, the Committee recommends that the State party ensure better coordination among the Ministry of Gender, Children and Social Welfare and the National Technical Working Groups on developing and implementing child rights policies, and designate adequate resources to the Ministry for providing leadership and effective general oversight for the monitoring and evaluation of activities on child rights under the Convention and its Optional Protocols across sectoral ministries and from the central to local government levels.**

Dissemination and awareness-raising

13. The Committee notes that the Malawi Human Rights Commission has been involved in the dissemination of the international human rights instruments and that the Ministry of Gender, Children and Social Welfare has provided training on the Child Care, Protection and Justice Act, the Trafficking in Persons Act and the Optional Protocol. However, it remains concerned that the efforts to disseminate and raise awareness on the issues covered by the Optional Protocol are not sufficient.

14. **The Committee recommends that the State party strengthen its efforts to make all the provisions of the Optional Protocol widely known to the public. In that regard, the State party should:**

(a) **Develop and implement specific, comprehensive and long-term awareness-raising programmes with a particular focus on preventive measures, assistance programmes and reporting mechanisms for all offences under the Optional Protocol at the national, regional and local levels, including in partnership with the media;**

(b) **Ensure effective monitoring and evaluation of the programmes adopted, with a view to identifying possible deficiencies for corrective action;**

(c) **Ensure that the issues relating to the provisions of the Optional Protocol are included in school curricula at all levels of the education system, using appropriate materials created specifically for children.**

Training

15. The Committee takes note of the information provided on different training activities of the Ministry of Gender, Children and Social Welfare and the development of a manual for training those who implement the Child Care, Protection and Justice Act. However, it is concerned that the measures taken are not systematic and do not adequately cover all offences under the Optional Protocol. It is also concerned that not all of the main actors responsible for the enforcement of the Optional Protocol, particularly judges, law enforcement officers, prosecutors, social workers and investigators on issues of child trafficking and immigration officials, have received systematic training on the Optional Protocol.

16. **The Committee recommends that the State party extend and further strengthen its training activities. In that regard, the State party should ensure that such activities are systematic and multidisciplinary, cover all areas under the Optional Protocol and are provided to all relevant professionals working with and for children, including judges, law enforcement officers, prosecutors, social workers, investigators and immigration officials.**

Allocation of resources

17. The Committee notes the budgetary restrictions in the State Party. However, it is concerned that the resources provided to the Ministry of Gender, Children and Social Welfare are insufficient for it to effectively carry out its programming and implement activities under the Optional Protocol.

18. **The Committee recommends that the State party ensure that sufficient and targeted resources are allocated for the effective implementation of the Optional Protocol in all of the areas covered by it. The Committee also recommends that the Ministry of Gender, Children and Social Welfare is sufficiently staffed for the effective implementation of protection, prevention and response activities.**

V. Prevention of the sale of children, child prostitution and child pornography (art. 9 (1) and (2))

Measures adopted to prevent offences prohibited under the Optional Protocol

19. The Committee notes the efforts undertaken by the State party to put in place a community child protection mechanism, such as community and police victim support units. However, the Committee is concerned that:

(a) Those units do not operate effectively owing to limited support and a human resource gap;

(b) The National Coordinating Committee against Trafficking in Persons and the safety homes and places of safety for care and protection of children have not yet been established;

(c) The State party has not been able to meet its co-payment obligation for the Social Cash Transfer Programme, aimed at protecting children as well as reducing extreme poverty and hunger, which are factors that expose children to the risk of trafficking, sale and prostitution;

(d) There are limited possibilities for birth registration before the mother is discharged from hospital, and the awareness and implementation of the National Registration Act has been slow;

(e) The harmful customs known as *kupimbira* and *kutomera*, where a girl is pledged or sold into forced marriage, are still practised;

(f) The referral and follow-up system within the existing child protection system for identifying children at risk of becoming victims of the offences under the Optional Protocol is insufficient;

(g) The limited information available on the efforts to protect children in vulnerable situations, including asylum-seeking and refugee children, unaccompanied migrant and undocumented children.

20. **The Committee recommends that the State party increase its preventive measures to cover all areas of the Optional Protocol and in particular that it:**

(a) **Provide sufficient resources to the community and police victim support units, in particular to finalize the recruitment of community child protection workers and their integration into the government payroll;**

(b) **Expedite the establishment and operationalization of the National Coordinating Committee against Trafficking in Persons and the safety homes and places of safety for care and protection of children;**

(c) **Provide co-funding as agreed under the Social Cash Transfer Programme in order to ensure sustained donor support;**

(d) **With reference to paragraph 18 of its concluding observations under the Convention, expedite the scaling-up of birth registration in health facilities, the use of mobile registration structures, and the creation of registration at the traditional authority level to ensure that birth registration is available to all;**

(e) **Take all measures necessary to eliminate harmful practices, such as *kupimbira* and *kutomera*;**

(f) **Strengthen the referral and follow-up procedures, specialized mechanisms and procedures for the identification of children at risk of becoming victims of the offences covered by the Optional Protocol, in particular among children in vulnerable situations, such as migrant and refugee children, children in street situations, children with albinism, child domestic workers and children from economically weak families, and strengthen prevention programmes and the protection of potential victims, in particular girls;**

(g) **Strengthen its efforts to ensure that prevention efforts also target children in vulnerable situations, including asylum-seeking and refugee children, unaccompanied migrant and undocumented children.**

Adoption

21. The Committee notes that the Law Commission finalized the review of the Adoption Act and that the State party has been developing guidelines for all stakeholders in matters of adoption. It is however concerned that there has been no progress in the adoption of the revised Adoption Act.

22. **With reference to paragraphs 30 of its concluding observations under the Convention, the Committee recommends that the State party pass into law expeditiously the revised Adoption Act, finalize the guidelines for all stakeholders in matters of adoption, raise awareness about the adoption procedures and regulations and promote and encourage formal domestic adoption. It also recommends that the State party strengthen its efforts to ensure that all adoptions comply fully with the principles and provisions of the Convention on the Rights of the Child, of the Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption and other relevant international instruments.**

Child sex tourism

23. The Committee is concerned at the reports of cases of child sex tourism at the holiday resorts along Lake Malawi, as acknowledged by the State party in its report (see CRC/C/OPSC/MWI/1, paras. 31 and 32).

24. **The Committee urges the State party to conduct advocacy with the tourism industry on the harmful effects of child sex tourism, to disseminate widely the World Tourism Organization Global Code of Ethics for Tourism among travel agents and tourism agencies, and to encourage those enterprises to become signatories to the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism. It also urges the State party to impose strict penalties for the perpetrators without any exceptions.**

Measures to prevent and tackle online child sexual exploitation and abuse

25. The Committee is concerned that there is no policy to prevent online child sexual exploitation and abuse.

26. **With reference to Human Rights Council resolution 31/7 on the rights of the child, information and communications technologies and child sexual exploitation, and to the outcomes of the 2014 and 2015 "WePROTECT" summits, the Committee recommends that the State party adopt a strategy for the prevention of online child sexual exploitation and abuse, including a public education programme to raise awareness, mandatory school education on online behaviour and safety, and knowledge and reporting of online child sexual exploitation and abuse offences, and for the participation of children in the development of policies and practices.**

VI. Prohibition of the sale of children, child pornography and child prostitution and related matters (arts. 3; 4 (2) and (3); and 5-7)

Existing criminal or penal laws and regulations

27. The Committee welcomes the amendments made to the Penal Code (Amendment) Act 2011 in order to better reflect the provisions of the Optional Protocol. However, it is concerned that the Penal Code does not define and criminalize all forms of sale of children.

28. **The Committee recommends that the State party define and criminalize the sale of children, in conformity with articles 2 and 3 of the Optional Protocol, and that it does not limit the definition to cases of trafficking in children. In particular, the State party should define explicitly and criminalize:**

(a) **The sale of children through illegal adoption;**

(b) **The transfer of organs of the child for profit;**

(c) **The engagement of the child in forced labour.**

29. The Committee is concerned that the offence of child pornography is not prohibited explicitly and that the Censorship Act does not cover electronic media and the Internet, which are the most common modes of distributing pornographic material.

30. **The Committee recommends that the State party, in conformity with articles 2 (c) and 3 (b) and (c) of the Optional Protocol, amend its Penal Code and Censorship Act with a view to criminalizing explicitly child pornography, including using electronic media and the Internet.**

Impunity

31. The Committee is deeply concerned that there is insufficient information regarding the number of cases that are duly investigated and the number of perpetrators who are prosecuted and sentenced.

32. **The Committee recommends that the State party take all measures necessary to ensure that all cases of sale of children, child prostitution and child pornography are investigated effectively and that perpetrators are prosecuted and punished with appropriate sanctions commensurate with the gravity of their crimes.**

Liability of legal persons

33. The Committee welcomes the inclusion of the liability of legal persons under the Trafficking in Persons Act. It is however concerned that the Act does not cover all offences under the Optional Protocol and at the absence of laws regulating the conduct of labour recruitment agencies.

34. **The Committee recommends that the State party incorporate explicitly into its penal and trafficking legislation the liability of legal persons who participate in any of the offences under the Optional Protocol, and that it introduce laws to govern the conduct of labour recruitment agencies, including the establishment of legal sanctions commensurate with the seriousness of the crime committed.**

Extraterritorial jurisdiction and extradition

35. The Committee is concerned about the absence of legislation on extraterritorial jurisdiction and extradition concerning all offences covered by the Optional Protocol.

36. **The Committee recommends that the State party take all measures necessary to ensure that its national legislation enables it to establish and exercise extraterritorial jurisdiction for all offences under the Optional Protocol. It also recommends that the State Party include those offences in all future extradition treaties and consider using the Optional Protocol as a basis for extradition in the absence of any extradition treaty.**

VII. Protection of the rights of child victims (arts. 8 and 9 (3) and (4))

Measures to protect child victims of offences under the Optional Protocol

37. The Committee notes the efforts of the State Party, but remains concerned that:

(a) The system in place for identifying victims of child pornography, child prostitution and the sale of children, including trafficking, is inadequate and inefficient;

(b) Law enforcement, border and immigration authorities do not have specific procedures to identify systematically child victims at borders or any other location and provide them with adequate services, particularly referral and protection;

(c) Law enforcement officers treat child victims of offences under the Optional Protocol as offenders;

(d) Child victims of offences under the Optional Protocol are not de facto capable of seeking compensation for acts committed against them owing to limited support, despite the de jure existence of provisions for such compensation.

38. **In the light of article 9 (3) of the Optional Protocol, the Committee recommends that the State party:**

(a) **Establish mechanisms and procedures for the early identification of child victims of offences under the Optional Protocol and ensure that those responsible for such identification, including law enforcement officers, border and immigration authorities, judges, prosecutors, social workers and medical staff, are trained in children's rights, child protection and child-friendly interviewing skills;**

(b) **Ensure that children who are victims of offences under the Optional Protocol are not subject to treatment or sanctions for offences related to their situation and are given appropriate support;**

(c) **Provide all children with free or subsidized legal aid and the support of child psychologists and social workers, and ensure they have access to child- and gender-sensitive complaint mechanisms and appropriate procedures for seeking, without discrimination, compensation and redress.**

Recovery and reintegration of victims

39. The Committee takes note that the State party runs the Social Rehabilitation Centre in Lilongwe for trafficking victims. However, it is concerned that the Centre is underfunded, lacks long-term support and is unsuitable for child victims, resulting in some of them returning to the places from where they were removed or being re-trafficked.

40. **The Committee recommends that the State party ensure the provision of appropriate human, financial and technical resources to the Social Rehabilitation Centre in Lilongwe and any similar institutions, and that it promote the physical and psychological recovery and full reintegration of child victims in accordance with article 9 (3) of the Optional Protocol.**

VIII. International assistance and cooperation (art. 10)

Multilateral, bilateral and regional agreements

41. In the light of article 10 (1) of the Optional Protocol, the Committee encourages the State party to continue to strengthen international cooperation through multilateral, regional and bilateral arrangements, especially with neighbouring countries, including by strengthening procedures for and mechanisms to coordinate the implementation of such arrangements, with a view to improving prevention, detection, investigation and the prosecution and punishment of those responsible for any of the offences under the Optional Protocol.

IX. Follow-up and dissemination

42. **The Committee recommends that the State party take all measures appropriate to ensure that the recommendations contained in the present concluding observations are fully implemented, inter alia, by transmitting them to the relevant government ministries, the Parliament and national and local authorities, for appropriate consideration and further action.**

43. **The Committee also recommends that the State party make the report, the written replies to the list of issues and the present concluding observations widely available, including but not exclusively through the Internet, to the public at large, civil society organizations, youth groups, professional groups and children, in order to generate debate on and awareness of the Optional Protocol, its implementation and monitoring.**

X. Next report

44. **In accordance with article 12 (2) of the Optional Protocol, the Committee requests the State party to include further information on the implementation of the Optional Protocol in its next periodic report under the Convention on the Rights of the Child, to be submitted in accordance with article 44 of the Convention.**